UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 15-1923-RGK (Ex)**	Date	April 28, 2016
Title	***James Davis Bennett and Pamela Bennett v. United States***		

Present: The Honorable	R. GARY KLAUSNER, U.S. DISTRICT JUDGE

Sharon L. Williams (Not Present)	Not Reported	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) Order Re: Plaintiffs' Motion to Dismiss FTCA Claims without Prejudice (DE 70)**

On March 16, 2015, James Davis Bennett and Pamela Bennett ("Plaintiffs") filed a Complaint against the United States of America ("the Government") seeking damages under the Federal Tort Claims Act ("FTCA").

Before filing their FTCA claim, Plaintiffs also filed a *Bivens* claim premised on the same facts. On September 22, 2015, this Court granted summary judgment on the *Bivens* claim in favor of Defendants. Plaintiffs timely appealed to the Ninth Circuit. On November 12, 2015, this Court denied Plaintiff's motion to stay the FTCA claim pending the Ninth Circuit's decision on the *Bivens* claim.

Presently before the Court is Plaintiffs' motion to dismiss without prejudice all of their claims. "[A]n action may be dismissed [without prejudice] at the plaintiff's request only by court order, on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2). "A Rule 41(a)(2) motion is addressed to the sound discretion of the district court." *Sams v. Beech Aircraft Corp.*, 625 F.2d 273, 277 (9th Cir. 1980). "In ruling on a motion for voluntary dismissal, the District Court must consider whether the defendant will suffer some plain legal prejudice as a result of the dismissal." *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982).

Here, Plaintiffs wish to dismiss their claims without prejudice to avoid the FTCA judgment bar, which, if triggered, will moot their *Bivens* claim currently on appeal. The point of the judgment bar, however, is to insulate the government and its employees from successive lawsuits based on the same facts. If the Court were to grant Plaintiffs' request, it would be subjecting the Government to the very legal prejudice that the FTCA judgment bar was designed to prevent. Accordingly, the Court **DENIES** Plaintiffs' request to dismiss their case without prejudice.

IT IS SO ORDERED.

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Initials of Preparer __________